

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN R. ROWLEY and U.S. POSTAL SERVICE,
POST OFFICE, Reno, NV

*Docket No. 99-1609; Submitted on the Record;
Issued March 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's wage-earning capacity was represented by the selected position of bookkeeper.

The Office accepted that appellant, then a 38-year-old human resources specialist, sustained post-traumatic stress disorder with major depressive episode causally related to her federal employment on November 10, 1993. By letter dated October 16, 1998, the Office notified appellant that it proposed to reduce her compensation because the selected position of bookkeeper at \$423.00 per week represented her wage-earning capacity. In a decision dated November 17, 1998, the Office reduced appellant's compensation to reflect her wage-earning capacity. By decision dated March 11, 1999, the Office denied modification of the prior decision.

The Board finds that the Office properly reduced appellant's compensation to reflect her wage-earning capacity in the selected position of bookkeeper.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction in such benefits.¹

Under section 8115(a) of the Federal Employees' Compensation Act, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or if the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, his degree of physical impairment, his usual employment, his age, his qualifications for other employment, the

¹ *Carla Letcher*, 46 ECAB 452 (1995).

availability of suitable employment and other factors and circumstances which may affect his wage-earning capacity in his disabled condition.²

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an Office wage-earning capacity specialist for selection of a position, listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open market, that fits the employee's capabilities with regard to his or her physical limitations, education, age and prior experience. Once this selection is made, a determination of wage rate and availability in the labor market should be made.³ Finally, application of the principles set forth in *Albert C. Shadrack* will result in the percentage of the employee's loss of wage-earning capacity.⁴

In this case, there is no medical evidence indicating that appellant is unable to perform the actual duties of the selected position. The work restrictions provided in an August 20, 1996 report, by an attending psychologist, Dr. Yvonne Wood, were that appellant could not work at the employing establishment. Dr. Wood did not restrict appellant from performing the duties of a sedentary position such as a bookkeeper. Appellant did in fact return to work in October 1996 as an office manager, in July 1997 as a technical writer and in March 1998 performed temporary clerical work.⁵ In a report dated October 27, 1998, Dr. Wood indicated that appellant felt she was not qualified to work as a bookkeeper, but this is a vocational issue, not a medical issue. The Board finds that the Office properly determined that appellant was medically capable of working as a bookkeeper.

As noted above, the procedure for selecting a position requires that a rehabilitation specialist identify a position based on appellant's capabilities, then determine the wage rate and availability in the labor market. In this case, the record indicates that the rehabilitation specialist identified the position of bookkeeper (DOT No. 210.382-014). Appellant argues that she is not vocationally qualified for the selected position. The record establishes, however, that appellant completed a training course in 1996 and a rehabilitation specialist indicated in a September 21, 1998 memorandum that the training was for the positions of office manager, benefits manager and bookkeeper. The rehabilitation counselor clearly indicated that appellant's training and transferable skills were sufficient vocational preparation for a bookkeeper position.

With respect to availability, the rehabilitation specialist found that the position was reasonably available in appellant's area, with a weekly wage rate of \$423.00 per week. The Board notes that the Office is not obligated to actually secure employment for appellant.⁶ Even if the employee is unsuccessful in obtaining work or has submitted documents from individual

² See *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992); see also 5 U.S.C. § 8115(a).

³ See *Dennis D. Owen*, 44 ECAB 475 (1993).

⁴ 5 ECAB 376 (1953); see also 20 C.F.R. § 10.303 (1998) (currently § 10.403).

⁵ The Office properly determined that these temporary positions were not appropriate for wage-earning capacity determinations. See *Pamela J. Darling*, 49 ECAB 286 (1998).

⁶ *Dennis D. Owen*, *supra* note 3.

employers indicating that jobs were not available, this does not in itself establish that the selected position was not reasonably available.⁷ There is no probative evidence refuting the rehabilitation specialist's finding that the selected position was reasonably available. With respect to wage rate, appellant has disputed the wage rate of \$423.00 per week. The rehabilitation specialist indicated in September 29, 1998 reports that the wage rate was determined from employers in the area. Appellant submitted a state wage survey, but this information is from 1996 and does not specifically reference the selected position of bookkeeper. The Board finds that the weight of the evidence indicates a wage of \$423.00 per week as appropriate for a bookkeeper position in appellant's area.

The Board finds that the Office properly followed its procedures in determining that the selected position of bookkeeper represented appellant's wage-earning capacity. Appellant's compensation was properly reduced to reflect her loss of wage-earning capacity.⁸

The decision of the Office of Workers' Compensation Programs dated March 11, 1999 is hereby affirmed.

Dated, Washington, DC
March 19, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ See *Karen L. Lonon-Jones*, 50 ECAB _____ (Docket No. 97-155, issued March 18, 1999); *Wilson L. Clow, Jr.*, *supra* note 2.

⁸ See *Albert C. Shadrick*, *supra* note 4.